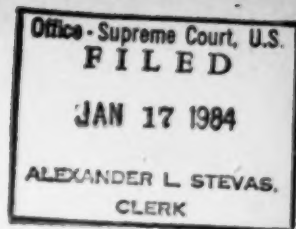


83-1233



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER, 1983 TERM

NO. _____

ROBERT ANTHONY BOWDEN,
PETITIONER

VS.

UNITED STATES OF AMERICA,
RESPONDENT

A P P E N D I X

NO.83-5084

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA
PLAINTIFF-APPELLEE

V.

ORDER

ROBERT ANTHONY BOWDEN
DEFENDANT-APPELLANT

BEFORE: LIVELY, Chief Circuit Judge: JONES,
Circuit Judge, and HOLSCHUH, District Judge.

The Defendant-appellant was tried on four counts of willful attempt to evade paying income tax by filing false and fraudulent tax income returns, involving the years 1976, 1977, 1978 and 1979. The jury acquitted the defendant on the counts covering the years 1976, 1977 and 1979, but convicted him on the count involving tax returns for the year 1978. The sole issue raised on appeal relates to the conduct of the trial by the district judge. After considering the briefs and oral arguments of counsel and examining the record on appeal

*The Honorable John D. Holschuh, Judge, U.S. District Court for the Southern District of Ohio, sitting by designation.

this court concludes that the judgment should be affirmed.

The government used a tax expert to testify as to tax computations he had made based on the government's evidence of omitted income and to summarize the tax consequences thereof. Several times during direct examination this witness noted errors in his computations and summaries. On cross-examination, defense counsel elicited a number of additional errors. During cross-examination the district court stated that the witness' testimony as a summary witness was becoming confusing and that in order to prevent confusion he would permit the witness to correct his computations. Over objection of defense counsel the trial judge dismissed the jury for the weekend, advising the jury of the purpose of an early adjournment on Friday afternoon. After revisions were made the witness testified on Monday morning and indicated in his testimony that the income of the defendant

had been understated by a smaller amount than was charged in the indictment. Defense counsel was permitted to conduct a thorough cross-examination of the witness following this testimony.

This court is convinced that there was no deprivation of the Sixth Amendment right to confrontation. However, a trial judge must not unduly interfere with cross-examination or otherwise hamper legitimate efforts of defense counsel to present a defense by forcefully questioning prosecution witnesses. Defense counsel argues that the timing of the court's interruption was critical to his development of the thesis that the government's expert witness was not completely competent to interpret the evidence and that this reflected adversely on the entire prosecution. This Court recognizes the argument of defense counsel, but also concludes that the district court in this case, by permitting full cross-examination

when the witness returned to the stand, preserved defense counsel's right to develop his theory. The court further finds that defense counsel did indeed proceed to point out the problems with the expert's testimony and, in view of the other evidence of willful understatement of income, it is unlikely that any effects flowing from the interruption of cross-examination contributed to the jury's ultimate conclusion.

The judgment of the district court is affirmed.

ENTERED BY ORDER OF THE COURT

/SIGNED

CLERK

ISSUED AS MANDATE: DECEMBER 12, 1983
COSTS: NONE

A TRUE COPY

ATTEST:
JOHN P. HEHMAN, Clerk
/SIGNED

By: _____
Deputy Clerk

UNITED STATES OF AMERICA VS.

DEFENDANT - ROBERT ANTHONY BOWDEN

UNITED STATES DISTRICT COURT FOR
MIDDLE DISTRICT OF TENNESSEE

DOCKET NO. 82-10012

JUDGMENT AND PROBATION / COMMITMENT ORDER

In the presence of the
attorney for the government
the defendant appeared in
person on this date -----January 21, 1983

COUNSEL

____ WITHOUT COUNSEL

However the court advised defendant of
right to counsel and asked whether de-
fendant desired to have counsel ap-
pointed by the court and the defendant
thereupon waived assistance of counsel

X

____ WITH COUNSEL

Bob Lynch, Jr. (Name of Counsel)

PLEA

____ GUILTY, and the Court being satisfied
that there is a factual basis for the
plea,

____ NOLO CONTENDERE,

RECEIVED FOR ENTRY

3:30 P.M.

JANUARY 25, 1983

XNOT GUILTY

/SIGNED

DEPUTY CLERK

FINDING & JUDGMENT

There being a verdict of

x NOT GUILTY, Defendant is charged
Cts. 1,2,4

x GUILTY, Ct.3

Defendant has been convicted as charged of the offense of On or about April 16, 1979, in the Middle District of Tennessee, Robert Anthony Bowden, who during the calendar year 1978 was married, did attempt to evade and defeat a large part of the income tax due and owing him and his wife, by preparing and signing a false and fraudulent income tax return on behalf of himself and his said wife, which was filed with the IRS, wherein it was stated that their taxable income for said calendar year was the sum of \$35,908.23, and the amount of tax due was the sum of \$7,317.44, whereas he well knew their joint taxable income there was approximately \$50,133.86, upon which said taxable income there was owing to the United States of America approximately \$13,445.51. In violation of Sec. 7201, IRS; 26 U.S.C. Sec. 7201.

SENTENCE OR PROBATION ORDER SPECIAL CONDITIONS OF PROBATION ADDITIONAL CONDITIONS OF PROBATION

It is hereby ADJUDGED that the defendant pay a fine to the United States in the sum of \$3,000.00; that he is committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of 1 year and 1 day; that the defendant shall become eligible for parole under 18 U.S.C. sec. 4205 (b)(2) at such times as the parole commission may determine; and that he is to stand committed until such fine is paid or he is otherwise discharged by due course of law.

Execution of the sentence of imprisonment and the order that the defendant stand committed until the fine is paid hereby are suspended and stayed until Tuesday, March 22, 1983; and, conditioned upon the defendant's good behavior and his reporting during normal working hours at his own expense to the head of the place to be designated for his confinement, he will remain on his present bond for such period of suspension and stay.

The Defendant was advised of his right of appeal and of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis and that, if he so requested of this Court would prepare and file forthwith a notice of appeal on his behalf.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation and at any time during the probation period of within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The Court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

 U.S. JUDGE

 U.S. MAGISTRATE Date: January 24, 1983

CERTIFIED AS A TRUE COPY ON

THIS DATE: 1-25-83

/SIGNED

 Clerk

 Deputy